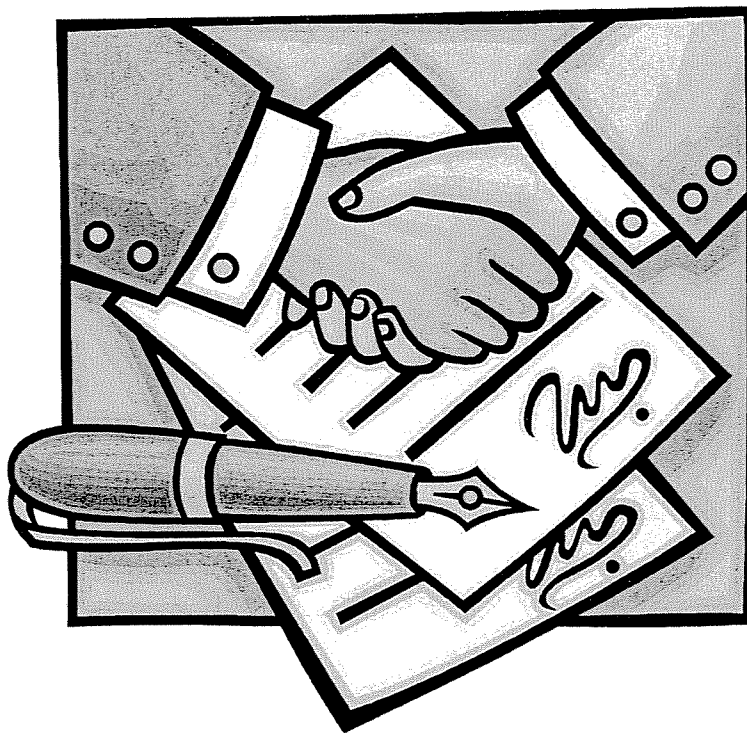


State of Arizona Tribal Consultation Policies



**The following documents are Tribal
Consultation Policies that were submitted
after the first distribution date of
September, 2006**

Janet Napolitano
Governor

Mark Winkleman
State Land
Commissioner


Arizona State Land Department



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Arizona State Land Department Policy No. 06-01
Issued: 12/14/06

TO: Division Directors

FROM: Mark Winkleman 
State Land Commissioner

DATE: December 14, 2006

RE: SLD – Tribal Government Consultation Guidelines

PURPOSE

This policy establishes basic principles that guide the Arizona State Land Department's ("ASLD") relations with Arizona Tribal governments within ASLD's responsibilities of administration and management of Arizona's State Trust Lands.

The ASLD manages approximately 9.2 million acres of Arizona State Trust land that were granted to the State under the provisions of the 1910 federal "Enabling Act" which provided for Arizona's statehood in 1912. In compliance with the Enabling Act, the State's Constitution and statutory guidelines, the Department manages the Trust lands to generate revenue for the Trust's purposes. All uses of the Trust land and its resources must benefit the Trust's purposes.

ASLD FIDUCIARY RESPONSIBILITIES

The ASLD functions as Trustee of the State's Trust land and therefore must adhere to its fiduciary responsibility to act in the best interest of the Trust. The ASLD's fiduciary responsibilities are governed by extensive and detailed provisions in Arizona's Enabling Act (Sections 24-30, Act of June 20, 1910, c. 310, 36 U.S. Stat. 557-579), the Arizona Constitution (Article 10), and statutes in A.R.S. Titles 27 (mineral estate) and 37 (surface estate); as well as extensive case law.

This fiduciary responsibility, however, does not prevent the ASLD from coordinating Trust land management issues where Trust lands are commingled with Tribal Reservation lands.

This Substantive Policy Statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

ASLD Recognition of Tribal Sovereignty

The ASLD recognizes the sovereignty of Arizona's Tribal governments and their jurisdiction on Tribal lands within their respective reservation boundaries.

The ASLD recognizes that the federal government has the primary responsibility for assisting Tribes in the land use planning, management and use of a Tribe's Reservation lands.

POLICY GUIDELINES

ASLD Consultation on Trust Land Planning or Action on Trust Estate within Reservation Boundaries

Trust Surface Estate – Where State Trust surface estate exists within Reservation boundaries, the ASLD will notify and request comments from the respective Tribe involving Trust land use planning or action.

Trust Sub-surface (Mineral or Oil and Gas) Estate – Where State Trust mineral or oil and gas estate may exist under Tribal owned surface estate or within Reservation boundaries, the ASLD will notify and request comments from the respective Tribe upon any proposed action regarding the sub-surface estate.

Federal Trust Land Condemnation within Reservation Boundaries

To the extent possible, ASLD will coordinate with Tribal representatives, the Tribe's counsel, the U.S. Bureau of Indian Affairs or other designated federal entity in any congressionally authorized condemnation of State Trust interest within the Tribe's reservation boundaries by providing pertinent records, data and other information that may be requested or schedule or attend meetings to discuss such information in an expeditiously and timely manner.

Upon Congressional authorization of a land condemnation action involving State Trust interests in land located within the boundaries of a tribal reservation, the ASLD will withdraw the interests being condemned from application or sale to facilitate the transfer of title to the federal government. This withdrawal shall remain in effect until it is concluded by the Department that the condemnation transaction is no longer viable or not in the best interest of the State Trust.

RESPONSIBILITY

Responsibility for the enforcement of this policy lies with the ASLD division directors, section managers, staff and the office of the Commissioner.



ARIZONA DEPARTMENT OF ECONOMIC SECURITY

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		New	1-29-07

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**ARIZONA DEPARTMENT OF ECONOMIC SECURITY**

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DES 1-92-03
Tribal Government Consultation

A. INTRODUCTION

The mission of the Arizona Department of Economic Security (Department) is to promote safety, well-being, and self-sufficiency of children, adults and families. The vision of the Department is for every child, adult and family in the State of Arizona to be safe and economically secure. This includes collaborating with and coordinating service delivery to Arizona's 22 Tribal Nations.

B. BACKGROUND

A unique government-to-government relationship exists between Indian Tribes and Federal and State Governments. Since the formation of the Union, the United States has recognized Indian tribes as sovereign nations. Treaties and laws, together with court decisions, have defined a relationship between Indian Tribes and the Federal Government that is unlike that between the Federal Government and any other group of Americans. The Federal Government has enacted numerous laws and regulations that establish and define a trust relationship with Indian Tribes. As a State agency responsible for administering federal programs, these regulations play a significant role in this *Tribal Government Consultation* policy.

C. AUTHORITY

State of Arizona Executive Order 2006-14	Consultation and Cooperation with Arizona Tribes
Presidential Executive Order 13084	Consultation and Coordination with Indian Tribal Governments (May 14, 1998)
Presidential Executive Order 13175	Consultation and Coordination with Indian Tribal Governments (November 6, 2000)
Presidential Memorandum	Government-to-Government Relationship with Tribal Governments (September 23, 2004)
Social Security Act	Titles IXX, XX, XXI
Public Law 67-85	The Snyder Act
Public Law 89-73 as amended	Older Americans Act of 1965
Public Law 93-638, as amended	Indian Self-Determination and Education Assistance Act
Public Law 93-638, as amended	Native American Programs Act of 1974
Public Law 93-644, as amended	Indian Health Care Improvement Act
Public Law 104-4	Unfunded Mandates Reform Act of 1995
Public Law 104-193	Personal Responsibility and Work Opportunity Reconciliation Act of 1996
Public Law 105-220	Wagner-Peyser Act, as amended by the Workforce Investment Act of 1998
Presidential Executive Memorandum to the Heads of Executive Departments (April 29, 1994)	

D. DEFINITIONS

Consultation: Meaningful and timely dialogue with appropriate officials and representatives of tribal governments. Consultation emphasizes trust and respect, and requires the open exchange of information, full and candid expressions of views, and a commitment to fully consider other views during decision-making. Consultation seeks mutually acceptable resolutions to the extent possible.

Federally Recognized Tribes: Tribes with whom the federal government maintains an official relationship, usually established by treaty, congressional legislation, or executive order. The Bureau of Indian Affairs maintains and regularly publishes the list of federally recognized Indian Tribes.

Government-to-Government Relationship: Relationship that exists between federally recognized tribes and the federal government. Implicit in this relationship is the recognition of tribal sovereignty as individual nations within the U.S., and the U.S. government's obligation to protect tribal lands. The relationship between tribal and state governments should also be characterized as government-to-government.

Indian Child Welfare Act: By enacting the Indian Child Welfare Act (ICWA), Congress declared that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Joint Tribal/State/Federal Workgroups and/or Task Forces: A group composed of individuals who are tribal officials, appointed by federally recognized Indian Tribes and/or Federal or State agencies, to represent their interests while working on a particular policy, practice, issue and/or concern.

Nation: A stable, historically developed community of people, who share territory, economic life, distinctive culture, and language.

Native American: The people indigenous to North America.

Timely response/notice: When the Department is notified of an issue by a Tribe, the Department will respond within 10 work days. This response will, at a minimum, acknowledge receipt of notification of the issue and indicate the Department Native American Liaison as one contact person for follow-up. Appropriate division staff may be listed as a contact as well.

Treaty: A legally binding and written agreement that affirms the Government-to-Government relationship between two or more nations.

Tribal Officials: Elected/appointed tribal leader or official delegate designated in writing by an Indian Tribe.

E. PHILOSOPHY

Involving Indian Tribes in developing Departmental policy allows for locally relevant and culturally appropriate approaches to important issues. Therefore, the Department is committed to working with Indian Tribes to improve the quality, availability, and accessibility to human services to children, youth, adults and elders, and specifically applying the Indian Child Welfare Act to child welfare services for Native Americans in Arizona.

The Department views tribal consultation as a dynamic process. Joint effort between the Indian Tribes, the Department Director, the Native American Liaison, and its Division staff will promote the objectives of the *Tribal Government Consultation* policy. Together, they will further consistent implementation of the policy and work to ensure that the policy plays a meaningful role in addressing issues affecting Indian Tribes and American Indians in the State of Arizona.

F. POLICY

1. The guiding principle of this policy is to ensure that, pursuant to the special relationship between the Indian Tribes and Federal and State Governments, consultation is sought by the Department prior to taking actions that affect Indian Tribes.
 - a. Such actions refer to policies that have tribal implications and that have direct effects on one or more Indian Tribes, on the relationship between the State of Arizona and Indian Tribes, or on the distribution of power and responsibilities between the State of Arizona and Indian Tribes.
 - b. As a part of the consultation process, Department staff shall allow at least 60 days for a Tribe to respond to notifications of Department plans prior to taking further action.
2. Trust among the Department and Arizona's 22 Indian Tribes is an indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis.
3. The Department Native American Liaison is responsible for the Department's implementation and ongoing operation related to the requirements of this policy and will act as the principle point of contact for tribal issues.
4. Department staff persons who have a role in the development or implementation of policy substantially affecting Indian Tribes and American Indians in the State of Arizona shall coordinate with the Department Native American Liaison to ensure the required consultation takes place in a timely and effective manner.

G. OBJECTIVES

In order to fully effectuate this policy, the Department will, through the Department Native American Liaison:

1. Establish communication channels with the elected leader of each Tribe and the appointed leadership of the Social Services Department, the Workforce Investment/Jobs Department, the Tribal Native Employment Workforce (NEW) Department, the Health Department, the Child Support Enforcement Department, the Aging Department, the Child Protective Services, and any other necessary tribal program leader for each Tribe in Arizona. The Department's goal is to increase the Tribes' knowledge and understanding the Department's programs and policies, while at the same time Department staff will also increase their awareness of tribal programs and policies.
2. Seek consultation with Indian Tribes to discuss potential changes to policy that will have a significant impact on Indian Tribes.
3. Allow for consultation with Indian Tribes in the development of new policy with substantial Tribal implications.
4. Ensure consistent application of the *Tribal Government Consultation* policy.

H. CONSULTATION PROCESS

Consultation occurs whenever the Director and Tribal Official(s), and/or their designees, engage in oral or written correspondence to discuss an issue. Consultation with a single Indian Tribe will not substitute for consultation with other Tribes on issues that may affect more than one Tribe. The Department, through the Department Native American Liaison, will consult with Indian Tribes about policy issues at different levels through a variety of methods to facilitate Tribal consultation on policies that directly affect Indian Tribes and Native Americans in Arizona.

1. New or Changing Policy or Program Implementation

- a. When it appears that a new Department policy may be needed or a policy change is indicated, the Department shall consider whether the policy change is likely to have a significant impact on Indian Tribes in the State of Arizona.
- b. When an issue is identified that is likely to have a significant impact on Indian Tribes in the State of Arizona, the Department shall provide timely written notice to Arizona Indian Tribes soliciting feedback and recommendations regarding the issue. Such solicitations shall be directed to Tribal leaders explaining the background, describing the proposed action, and requesting a response within a given timeframe.
- c. When a Tribal elected or appointed official requests additional information or provides feedback regarding an issue, the Department shall communicate, verbally or through written correspondence, with the official to provide a timely and substantive response.
- d. Face-to-face consultation sessions may be scheduled. Such sessions may be scheduled as a single statewide meeting, or in conjunction with other statewide meetings.
- e. The Department may also provide written notice and a solicitation for feedback to non-Tribal organizations such as the Advisory Council on Indian Health Care, the Inter Tribal Council of Arizona, the Indian Health Service Area Offices in Arizona and Urban Indian Health Programs, and sister State agencies such as the Arizona Health Care Cost Containment System and the Arizona Department of Health, or the Arizona Commission on Indian Affairs. The Department may also seek input from collaborative child welfare organizations such as Casey Family Programs, which provides technical assistance and training in the Indian child welfare area to Indian Tribes. Such communications do not substitute for direct communication with the Indian Tribes in Arizona.

2. Ongoing Consultation

- a. The Department shall participate in the U.S. Department of Health and Human Services (HHS) regional consultations; and, as requested, in consultation meetings sponsored by HHS agencies, U.S. Department of Labor, U.S. Department of Commerce, the Indian Health Service, the InterTribal Council of Arizona, or Indian Tribes.
- b. The Department shall provide an opportunity for Indian Tribes to submit written comments during any period of ongoing consultation.
- c. The Department shall continue to meet regularly with Indian Tribes in the State of Arizona. To the extent issues of general application are discussed in such meetings, the Native American Liaison or other designated Department staff will provide follow-up, as appropriate.

I. JOINT TRIBAL/STATE/FEDERAL WORKGROUPS

1. Joint Tribal/State/Federal Workgroups and Task Forces

The Department may establish or participate in workgroups, task forces or other groups or committees with Indian Tribes and others to address issues affecting Indian Tribes and American Indians in Arizona.

2. Limitations

Interaction with joint Tribal/State/Federal workgroups will not take the place of Tribal consultation. Instead, this interaction is intended to enhance the consultation process by gathering individuals with extensive knowledge of particular policy, practice, issues, or concerns to work collaboratively and offer recommendations for consideration by the Department.

J. REPORTING

By June 30 of each year, the Department Native American Liaison shall report annually to the Governor and the Legislature.

1. The report shall include a description of all actions undertaken as a result of joint Department/tribal consultation activity.
2. The report shall be submitted electronically to the Governor and the Legislature with electronic copies to the Arizona Commission of Indian Affairs, who will make the report available to Arizona's tribal leaders.